

PART II – INTERNAL ORGANIZATION OF PROCURING ENTITIES

Roles of
accounting
officer.

7. In addition to the responsibilities stipulated under section 27(2) of the Act, the accounting officer shall be responsible for-

- (a) ensuring that the procuring entity establishes a tender committee and a procurement committee in accordance with the Act and these Regulations;
- (b) ensuring that the procuring entity establishes a procurement unit;
- (c) signing contracts for the procurement and disposal activities on behalf of the procuring entity for contracts entered into in accordance with the Act and these Regulations;
- (d) ensuring that the procurement plans are prepared; and
- (e) ensuring that the procuring entity properly documents procurement proceedings and manages records in accordance with these Regulations.

Procurement unit.

8. (1) A procuring entity shall establish a procurement unit in accordance with this Regulation.

(2) The level of qualification and experience required of procurement professionals under section 26(9) of the Act shall be stipulated by the Authority.

(3) The functions of the procurement unit shall be to-

- (a) maintain and update annually standing lists of registered tenderers required by the procuring entity and liaise with the Authority in respect of the Authority's register of suppliers and procuring agents;
- (b) prepare, publish and distribute procurement and disposal opportunities including invitations to tender, pre-qualification documents and invitations for expressions of interest;
- (c) co-ordinate the receiving and opening of tender documents;
- (d) maintain and safeguard procurement and disposal documents and records in accordance with these Regulations;
- (e) submit shortlists and lists of pre-qualified tenderers to the tender committee or procurement committee for approval;
- (f) issue procurement and disposal documents to candidates in accordance with the Act and these Regulations;
- (g) propose the membership of evaluation committee to the accounting officer for approval;
- (h) co-ordinate the evaluation of tenders, quotations and proposals;
- (i) recommend a negotiating team for appointment by the accounting officer where negotiations are allowed by the Act and these Regulations and participate in such negotiations;
- (j) prepare and publish notices of award and notices of tender acceptance;
- (k) prepare contract documents, in line with the award decision;
- (l) prepare and issue rejection and debriefing letters;
- (m) prepare contract variations and modifications to documents;
- (n) maintain and archive documents and records of

the procurement and disposal activities for the required period;

- (o) provide information, as required, for any petition or investigation to debar a tenderer or contractor or any investigation under review procedures;
- (p) implement the decisions of the procurement, tender and disposal committees, including co-ordinating all activities of these committees;
- (q) act as a secretariat to the tender, procurement and disposal committees;
- (r) liaise with the Authority and other bodies on matters relating to procurement and disposal;
- (s) prepare and submit to the Authority reports required under the Act, these Regulations and guidelines of the Authority;
- (t) monitor contract management by user departments to ensure implementation of contracts in accordance with the terms and conditions of the contracts;
- (u) report any significant departures from the terms and conditions of the contract to the head of the procuring entity;
- (v) recommend the delegation of a procurement or disposal function to another procuring entity by the head of the procuring entity whenever a need arises;
- (w) prepare consolidated procurement and disposal plans;
- (x) advise the procuring entity on aggregation of procurement to promote economies of scale;
- (y) co-ordinate internal monitoring and evaluation of the supply chain function;
- (z) carry out periodic market surveys to inform the placing of orders or adjudication by the relevant award committee;
- (aa) conduct periodic and annual stock taking;

- (bb) certify the invoices and payment vouchers to suppliers;
- (cc) approve extension of the tender validity period;
- (dd) verify that the available stock levels warrant initiating a procurement process;
- (ee) carry out any other functions or duties as may be provided under the Act or these Regulations and any other functions that might be stipulated by the Authority.

Responsibilities
of user
departments.

9. A user department shall be responsible for–

- (a) initiating procurement and disposal requirements and forwarding them to the procurement unit;
- (b) participating in the evaluation of tenders, proposals and quotations;
- (c) reporting any departure from the terms and conditions of the contract to the procurement unit;
- (d) forwarding details of any required variations to contracts to the procurement unit for consideration and action;
- (e) maintaining and archiving records of contract management;
- (f) preparing any reports required for submission to the procurement unit, the procurement committee, the tender committee, head of

procuring entity or the accounting officer;

- (g) undertaking conformity assessments of supplied goods, works and services with the specifications of the contract documents
- (h) endorsing the issuance of goods, works and services received notes;
- (i) preparing technical specifications and submitting the same to the procurement unit;
- (j) assisting in the preparation of procurement and disposal plans;
- (k) making clarifications on tenders, requests for quotations and any other matter as may be required; and
- (l) carrying out any other functions and duties as may be provided under the Act or these Regulations, or as may be stipulated by the Authority.

Tender
committee.

10. (1) A procuring entity shall establish a tender committee in the manner set out in the Second Schedule.

(2) The functions of the tender committee shall be to-

- (a) review, verify and ascertain that all procurement and disposal has been undertaken in accordance with the Act, these Regulations and the terms set out in the tender documents;
- (b) approve the selection of the successful tender or proposal;
- (c) award procurement contracts in accordance with thresholds prescribed in First Schedule;
- (d) ensure that funds are available for the procurement under consideration;
- (e) ensure that the procuring entity does not pay in excess of prevailing market prices;
- (f) review and approve aggregation of procurements where proposed;
- (g) review and approve the use of lots where

packaging into lots has been proposed;

- (h) review the selection of procurement method and where a procurement method, other than open tender, has been proposed, to ensure that the adoption of the other procurement method is in accordance with the Act , these Regulations and any guidelines stipulated by the Authority;
- (i) approve the list of tenderers in cases of restricted tendering pursuant to regulation 54(3);
- (j) approve the list of persons qualified to submit proposals pursuant to section 80 of the Act;
- (k) approve the list of persons to be given requests for quotations pursuant to regulation 59(2);
- (l) approve negotiations under the Act ,these Regulations and as may be stipulated by the Authority;
- (m) approve the amendment of contracts previously awarded by the tender committee, in accordance with the Act and these Regulations;
- (n) review the quarterly reports on quotations that have been awarded by the procurement committee.
- (o) undertake any other functions and duties as are provided under the Act, these Regulations or as may be stipulated by the Authority.

Approvals by tender committees.

11. (1)In considering submissions made by the procurement unit or evaluation committees, the tender committee may-

- (a) approve a submission ;or
- (b) reject a submission with reasons; or
- (c) approve a submission, subject to minor clarifications by the procurement unit or evaluation committee.

(2) The tender committee shall not-

- (a) modify any submission with respect to the recommendations for a contract award or in any other respect;

(b) reject any submission without justifiable and objective reasons;

(c) where the tender committee rejects the recommendation of the evaluation committee, the decision shall be reported to the head of the procuring entity or to the accounting officer

(3) Any submission rejected by the tender committee may be resubmitted and the tender committee shall provide an explanation and a justification for its decision thereof.

Procedure for
tender committee
meetings.

12.(1) The accounting officer or the head of the procuring entity shall appoint an alternate member for each member of the tender committee and only the alternate shall attend any meeting of the tender committee whenever the member is unable to attend.

(2) The quorum of the tender committee shall be five members including the chairman.

(3) Decisions of the tender committee shall be by consensus and where there is no consensus, the decision shall be through voting by simple majority and where there is a tie, the chairman shall have a second or casting vote.

(4) Where any member of the tender committee has a direct or indirect interest in any matter, he or she shall declare his or her interest in the matter and shall not participate in the deliberations or decision-making process of the committee in relation to that particular matter.

(5) Members of the tender committee may be paid such honoraria as the procuring entity may determine.

(6) The tender committee shall cause to be prepared minutes of all its meetings and such records shall include -

(a) a register of attendance;

(b) date of the meeting;

(c) list of all matters considered;

(d) the decision made for each matter, including any major issues discussed, the reasons for any rejections and any clarifications or minor amendments to which the approval is subject;

(e) a note on the basis of any evaluation made;

- (f) any conflicts of interest declared by members;
- (g) any dissenting opinions among tender committee members; and
- (h) such other records as may be necessary.

(7) The tender committee may invite independent advisers or members of the procurement unit to explain submissions or provide technical advice, where required.

(8) To enhance transparency of the procurement process the procuring entity shall invite in addition to the representative of various departments, at least two observers to attend its meetings in cases where the value of the contract is estimated to be above fifty million shillings.

(9) At least one of the observers invited under paragraph (8) shall come from a duly recognized private sector organization or discipline relevant to the procurement under consideration.

(10) The failure of an invited observer to attend a meeting shall not nullify the procurement proceedings.

Procurement
committee.

13. (1) A procuring entity shall establish a procurement committee.

(2) The procurement committee shall be responsible for procurement below the threshold of the tender committee set out in the First Schedule.

(3) The procurement committee shall be composed of-

- (a) an official delegated by the head of the procuring entity or the accounting officer, who shall serve as the chairman of the committee;
- (b) the finance officer or an officer carrying out related functions;
- (c) three other members appointed by the head of the procuring entity or the accounting officer.

(4) The head of the procurement unit shall appoint an officer to serve as secretary to the procurement committee.

Approvals by procurement committee.

14.(1) In considering submissions made by the procurement unit, the procurement committee may-

- (a) approve a submission ;or
- (b) reject a submission with reasons; or
- (c) approve a submission, subject to minor clarifications by the procurement unit.

(2)The procurement committee shall not-

- (a) modify any submission with respect to the recommendations for contract award or in any other respect;
- (b) reject any submission without justifiable and objective reasons.

(3) Any submission rejected by the procurement committee may be resubmitted and the procurement committee shall provide explanation and justification of its decision thereof.

Procedure for procurement committee meetings.

15. (1) The quorum for a meeting of the procurement committee shall be the chairman and at least two other members.

(2) Where any member is unable to attend a meeting of the procurement committee, that member shall delegate authority to an appropriate official, who shall attend the meeting in his or her place.

(3) Members of the procurement committee shall ensure that their authority is only delegated to officials with appropriate skills and experience to represent them at a meeting of the procurement committee.

(4) Decisions of the procurement committee shall be by consensus and where there is no consensus, the decision shall be through voting by simple majority and where there is a tie, the chairman shall have a second or casting vote.

(5) Where any member of the procurement committee has a direct or indirect interest in any matter, he or she shall declare his or her interest in the matter and shall not participate in the deliberations or decision-making process of the committee in relation to that particular matter.

(6)The procurement committee may invite independent advisers or members of the procurement unit to explain

submissions or provide technical advice, where required.

(7) The procurement committee shall cause to be prepared minutes of all its meetings and such records shall include –

- (a) a register of attendance;
- (b) date of the meeting;
- (c) list of all matters considered;
- (d) the decision made for each matter, including any major issues discussed, the reasons for any rejections and any clarifications or minor amendments to which the approval is subject;
- (e) a note on the basis of any evaluation made;
- (f) any conflicts of interest declared by members;
- (g) any dissenting opinions among procurement committee members; and
- (h) such other records as may be necessary.

Evaluation committees.

16. (1) For each procurement within the threshold of the tender committee, the procuring entity shall establish an evaluation committee for the purposes of carrying out the technical and financial evaluation of the tenders or proposals.

(2) An evaluation committee established under paragraph (1) may comprise-

- (a) a separate financial evaluation committee and a separate technical evaluation committee; or
- (b) a combined financial and technical evaluation committee.

(3) An evaluation committee shall consist of a chairman and at least two other members all appointed by the accounting officer or the head of the procuring entity upon recommendation by the procurement unit.

(4) No person shall be appointed under paragraph (3) if such person is a member of the tender committee of the procuring entity.

(5) A technical evaluation committee established in accordance with paragraph (2)(a) shall be responsible for-

- (a) the technical evaluation of the tenders or proposals received in strict adherence to the compliance and evaluation criteria set out in the tender documents;
- (a) performing the evaluation with all due diligence and within a period of thirty days after the opening of the tenders.

(6) Each member of the technical evaluation committee shall evaluate independently from the other members prior to sharing his or her analysis, questions and evaluation including his or her rating with the other members of the technical evaluation committee.

(7) A financial evaluation committee established in accordance with paragraph (2) shall be responsible for-

- (a) the financial evaluation of the tenders or proposals received in strict adherence to the compliance and evaluation criteria set out in the tender documents or request for proposals;
- (b) performing the evaluation with all due diligence and within a period of five days from the time of completion of the technical evaluation.

(8) Under no circumstances may any member of an evaluation committee enter into direct communication with any of the tenderers participating in a tender or proposal that such evaluation committee is considering.

(9) An evaluation committee shall prepare a report on the analysis of the tenders received, and final ratings assigned to each tender and submit the report to the tender committee.

(10) The report prepared under paragraph (9) shall include-

- (a) minutes of the opening of the tenders or proposals;
- (b) the results of the preliminary evaluation, with reasons why any tenders or proposals were rejected;
- (c) the scores awarded by each evaluator for each tender or proposal;
- (d) a summary of the relative strengths and

weaknesses of each tender or proposal;

- (e) the total score for each tender or proposal;
and
- (f) a recommendation to award the tender to the lowest evaluated tenderer or to the person who submitted the proposal with the highest total score.

Inspection and
acceptance
committee.

17. (1) A procuring entity shall establish an inspection and acceptance committee.

(2) The inspection and acceptance committee shall be composed of a chairman and at least two other members appointed by the accounting officer or the head of the procuring entity on the recommendation of the procurement unit.

(3) The inspection and acceptance committee shall immediately after delivery of the goods, works or services-

- (a) inspect and where necessary, test the goods received;
- (b) inspect and review the goods, works or services in order to ensure compliance with the terms and specifications of the contract;
- (c) accept or reject, on behalf of the procuring entity, the delivered goods, works or services.

(4) The inspection and acceptance committee shall -

- (a) ensure that the correct quantity of has been received;
- (b) ensure that the goods, works or services meet the technical standards defined in the contract;
- (c) ensure that the goods, works or services have been delivered or completed on time, or that any delay has been noted;
- (d) ensure that all required manuals or documentation have been received; and
- (e) issue interim or completion certificates or

goods received notes, as appropriate and in accordance with the contract.

Transfer of procurement authority.

18. (1) Pursuant to the provisions of section 27(6) of the Act, the Authority may transfer the procuring responsibility of a procuring entity to another procuring entity or procuring agent-

- (a) where the Authority is of the view that the procuring entity lacks the capacity to comply with the Act, these Regulations or the directions issued by the Authority, due to its size or capacity;
- (b) where the accounting officer or the head of the procuring entity decides that it would be more economical or efficient to transfer the function and requests the Authority to do so.

(2) The accounting officer or the head of the procuring entity who requests the Authority to transfer its function shall remain accountable for all decisions taken by the procuring entity to which the function is transferred.

(3) Where the procurement and disposal function is transferred to another procuring entity under paragraph (1) (b), the accounting officers or the heads of the two procuring entities shall agree on-

- (a) any function that may be excluded from the transfer arrangement;
- (b) the mechanism for implementation of the procurement and disposal requirement;
- (c) reporting and monitoring procedures and responsibilities;
- (d) any limitations or exceptions to the transfer; and
- (e) any costs to be paid.

(4) The agreement for transferring the procuring responsibility under paragraph (3) shall be in writing and signed by the accounting officers or the heads of the two procuring entities.

Procuring agents.

19. (1) A procuring agent shall pay a registration fee of twenty thousand shillings to the Authority.

(2) The fee under paragraph (1) shall be payable only once at the time of the initial registration.

(3) The procuring entity shall-

- (a) meet the cost of the services offered by the procuring agent;
- (b) prepare the terms of reference for the procuring agent assignment in accordance with the provisions of the Act and these Regulations;
- (c) be responsible for the actions and performance of the procuring agent

(4) Where the procuring agent is engaged, a procurement committee or a tender committee shall adjudicate the contract award.

(5) A procuring entity shall not contract out both the procurement functions and the contract management functions to the same procuring agent.

(6) None of the functions of the accounting officer, procurement committee or the tender committee shall be contracted out to a procuring agent.

Procurement
planning.

20. (1) A procuring entity shall prepare a procurement plan under section 26(3) (a) of the Act for each financial year as part of the annual budget preparation process.

(2) Annual procurement planning shall be integrated with applicable budget processes and based on indicative or approved budgets, as appropriate.

(3) Where appropriate, multi-year procurement plans may be prepared and shall be integrated into the medium term budgetary expenditure framework.

(4) A head of department shall submit an annual procurement plan to the accounting officer at least thirty days before the close of each financial year.

(5) The consolidated annual procurement plan shall be prepared by the procurement unit and approved by the head of the procuring entity and where applicable by the board of directors or a similar body.

Contents of
procurement plan.

21.(1) The annual procurement plan for each procuring entity shall include-

- (a) a detailed breakdown of the goods, works, or services required;
- (b) a schedule of the planned delivery, implementation or completion dates for all goods, works, or services required;
- (c) an indication and justification for whether it shall be procured within a single-year period or under a multi-year arrangement;
- (d) an indication of which items can be aggregated for procurement as a single package or for procurement through any applicable arrangements for common-user items;
- (e) an indication of which items shall be packaged into lots;
- (f) an estimate of the value of each package of goods, works or services required and an indication of the budget available and sources of funding;
- (g) an indication of the appropriate procurement method for each procurement requirement.

(2) where transfer of responsibilities is justified, the optimal period of such transfer shall be established taking into account seasonal price variations, warehousing and distribution capacity, and product shelf life;

(3) The Authority shall issue instructions to the procuring entities on the format for preparing procurement plans.

Purchase requisition and authorization.

22. (1) Every procurement requirement shall be initiated using a purchase requisition which shall include all necessary information pertaining to the procurement.

(2) When estimating the value of the goods, works or services, the procuring entity shall ensure that the estimate is realistic and based on up-to-date information on economic and market conditions.

(3) The purchase requisition shall be approved by the person specified in the First Schedule, prior to the initiation of procurement proceedings.

(4) Approved procurement requisitions shall be submitted to the procurement unit of the procuring entity to initiate procurement proceedings.

(5) Upon receipt of the approved purchase requisition, the procurement unit shall prepare a procurement plan for each individual procurement requirement, which shall include an estimate of the time required for each stage in the procurement cycle.